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Subject: Corps/EPA TA on H.R. 4100/S. 2306
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Carolyn/Jen:

On February 2, 2016, the Senate approved S. 2306 by unanimous consent. That bill, and the House companion (H.R. 4100), have been referred to the House Transportation and Infrastructure Committee.

I am requesting technical assistance from the Environmental Protection Agency and the Corps of Engineers on the potential impacts of this bill.

As I read this bill, it would require the Secretary of the Army to immediately assume responsibility for the assessment and remediation of the West Lake Landfill, located in Bridgeton, Missouri.

Based on information from EPA's CERCLIS (http://oaspub.epa.gov/enviro/cerclisquery.description_report?pgm_sys_id=MOD079900932), the West Lake Landfill is a facility on the National Priorities List, with active Potentially Responsible Parties (PRPs). According to EPA's website, a Record of Decision for Operable Unit 1 was completed in 2008, and according to [EPA's Region 7 update](#), in December, 2015, EPA and the PRPs reached agreement on dates for the final feasibility study to be completed for Operable Unit 1 (where the radiologically impacted material is located).

Yet, because H.R. 4100/S. 2306 would transfer responsibility for remediation activities at the Landfill from EPA's CERCLA/Superfund program to the Corps of Engineers Formerly Utilized Sites Remedial Action Program (FUSRAP), I am requesting the agencies views on the impacts of such a transfer.

Can you coordinate responses to the following questions about this transfer:

- (1) In the absence of this legislation, what was the expected time-frame for remedial activities at the site to initiate and to complete? What was the expected cost of these remedial activities, who would be responsible for such costs, and how would such costs be obtained? How would this timeline, these remedial costs, and the cost-recoveries be affected by enactment of H.R. 4100/S. 2306? Would the agencies expect that enactment of H.R. 4100/S. 2306 would accelerate remediation of the West Lake landfill?
- (2) As I noted earlier, a ROD for the site has already been completed, and ongoing work for the feasibility study is coming to completion that should lead to implementation of the cleanup of the site. However, if this site is transferred from EPA responsibility to Corps responsibility, would the Corps be able to implement the previously signed ROD and RI/FS work, or would the Corps need to do independent work on the site? If independent work were to be required, who would fund this work and what is your best estimate on how long would it be for this work to be completed?
- (3) Under CERCLA, EPA has order authority to direct PRPs to carry out remedial work related to

a site. Does the Corps have similar order authority, and if not, how would the Corps obtain the funds to carry out remedial work at the site? Can the Corps compel current PRPs to undertake remedial activities at the site?

- (4) Under CERCLA, RPs have strict, joint and several liability for remedial actions. If the site is transferred from CERCLA to the FUSRAP program, could that transfer have a potential impact on the liability of parties currently responsible for the contamination and remediation of the West Lake landfill? Does the savings provisions in subsection (e) of H.R. 4100/S. 2306 preserve existing RP liability?
- (5) How many sites are currently located in the Corps' FUSRAP program (both active and backlog)? The President's budget requests \$103 million for the FUSRAP program, that would be utilized on 20 sites identified in the [Press Book](#). If the West Lake landfill were transferred to the FUSRAP program, would sufficient funds be available to immediately address that site? Would the transfer of responsibility for the West Lake facility have a likely impact on the cleanup of currently ongoing or pending sites in the FUSRAP program?

Let me know if you have any questions. While neither bill has yet been scheduled, we would appreciate having this information sometime next week, if possible.

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